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March 29, 2004

VIA HAND DELIVERY

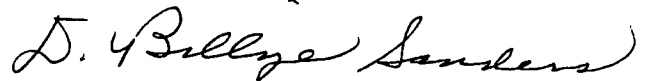
Deborah Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37219

Re: In the Matter of the Application of Volunteer First Services, Inc.
for a Certificate of Public Convenience and Necessity to Provide
Competing Telecommunications Services within the State of
Tennessee
Docket No. 03-00607

Dear Chairman Tate:

Enclosed you will find the original and thirteen (13) copies of Volunteer First Services' Reply Comments to the Comments of Citizens Telecommunications Company of Tennessee concerning the Application of Volunteer First Services.

Sincerely,



D. Billye Sanders
Attorney for Volunteer First Services, Inc.

DBS/hmd
Enclosures

cc: Kent Rosenbury
Kevin Crumbo
Guilford Thornton, Esq.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE: APPLICATION OF VOLUNTEER)	
FIRST SERVICES, INC. FOR A)	
CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY)	
TO PROVIDE COMPETING)	DOCKET NO. 03-00607
TELECOMMUNICATIONS SERVICES)	
WITHIN THE STATE OF TENNESSEE)	

**REPLY COMMENTS OF VOLUNTEER FIRST SERVICES, INC. TO
COMMENTS OF CITIZENS TELECOMMUNICATIONS COMPANY OF
TENNESSEE CONCERNING THE APPLICATION OF VOLUNTEER FIRST
SERVICES, INC. FOR A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETING TELECOMMUNICATIONS
SERVICES**

Comes now Volunteer First Services, Inc. ("VFS" or "Applicant") and files reply comments to the Comments of Citizens Telecommunications Company of Tennessee ("Citizens") concerning the Application of VFS for a Certificate of Convenience and Necessity ("CCN") to Provide Competing Telecommunications Services in the State of Tennessee. VFS filed its Application with the Tennessee Regulatory Authority ("TRA" or "Authority") for a CCN in this docket on November 19, 2003. On January 13, 2004, Citizens filed a Petition to Intervene. At the Authority Conference on February 9, 2004, the TRA considered the Petition to Intervene of Citizens. Counsel for Citizens advised the panel that Citizens did not oppose the Application of VFS. Citizens' counsel also stated that Citizens did not intend to seek discovery or file testimony in the proceeding.¹ The Authority panel

¹Transcript, February 9, 2004 Authority Conference at p 17.

granted the intervention of Citizens and an Order was issued, dated March 4, 2004, memorializing that decision and appointing the Authority's General Counsel or his designee as Hearing Officer to make findings of fact and conclusions of law, as necessary and to render the decision on the merits. Consistent with its position at the February 9 Authority Conference, Citizens did not pre-file testimony, nor did it seek to present testimony at the hearing.

At the conclusion of the hearing held on March 15, 2004, Citizens' counsel recommended that the certification of VFS be conditioned upon the completion of an interconnection agreement between Citizens and Ben Lomand Rural Telephone Cooperative Inc. ("Ben Lomand"), which would allow Citizens to provide competing telecommunications services in Ben Lomand's territory.

There is no evidence in the record to support Citizen's recommendation that such a condition be placed on the granting of the CCN to VFS. Citizens' request should be denied. In further support of its position that the Application should be granted without the condition recommended by Citizens, VFS makes the arguments and comments below. By filing these Comments, VFS waives no rights of Ben Lomand with respect to issues related to Ben Lomand's dealings with Citizens or to any position that Ben Lomand may assert regarding such issues or the appropriate forum in which such issues should be adjudicated.

I. The alleged dispute between Citizens and Ben Lomand regarding an interconnection agreement is not properly before the Authority in this docket.

Ben Lomand is a telephone cooperative governed by the Telephone Cooperative Act, T.C.A. § 65-29-101 *et seq.* Telephone cooperatives are specifically excluded from the definition of "public utility" and the jurisdiction of the TRA pursuant to the T.C.A. § 65-4-101(a)(5). Although T.C.A. § 65-29-130 provides that the TRA has jurisdiction over disputes arising between a telephone cooperative and other types of corporations rendering telephone service relative to and concerning territorial disputes, there are no facts in the record that establish a territorial dispute between Ben Lomand and Citizens. In his Comments, Counsel for Citizens states: "...Ben Lomand has opposed and continues to resist any attempt by Citizens' to compete in Ben Lomand's territory" (Citizens' Comments at p. 2). However, there is no evidence in the record in this docket to support this alleged fact.² Even if facts were established regarding a dispute in negotiation of an interconnection agreement, VFS' Application proceeding is not the appropriate forum in which to adjudicate such a dispute. VFS is not a party to any alleged dispute. Further, Ben Lomand is not the sole owner or even a majority owner of VFS. Adjudication of an alleged dispute of this nature should be resolved in a

² On information and belief, this statement is not accurate inasmuch as Ben Lomand and Citizens are currently in the process of negotiating an interconnection agreement. On information and belief an impasse has not been reached and the parties are still working in good faith toward an agreement. Counsel for Citizens even acknowledged that the parties are currently negotiating an interconnection agreement (Citizens' Comments p. 2.)

complaint proceeding or an arbitration proceeding filed for that purpose (T.C.A. § 65-29-130; 47 U.S.C. § 252).

II. There is no evidence in the record to support the condition proposed by Citizens.

Even if the TRA has jurisdiction to address a dispute between Ben Lomand and Citizens regarding an interconnection agreement, there is no evidence in the record in this docket regarding the dispute upon which the Authority can make a decision. There is no evidence in the record with respect to when a request for interconnection was made, how long the parties have been negotiating or the status of the negotiations. There is no statement of facts from a Citizens witness in this docket that establishes a controversy for which relief is requested. Consequently, there is no statement from a Ben Lomand witness establishing any facts in response. Counsel for Citizens cannot establish the facts regarding an alleged dispute in his statements at the hearing, nor can facts be established in his post-hearing Comments. Such facts would have to be established by testimony under oath by witnesses having knowledge of same. In addition, the parties to the matter are entitled to an opportunity for cross-examination of witnesses who assert purported facts (T.C.A. § 4-5-312). Even though such testimony would have been inappropriate in this proceeding and VFS would have objected to its presentation, Citizens had ample opportunity to attempt to present testimony in this Docket, but did not. If the TRA imposes a condition with no factual basis in the record to

substantiate it, the TRA's decision would be unsupported by the evidence and arbitrary and capricious. *See* T.C.A. § 4-5-314 and T.C.A. §4-5-322.

III. There are no facts in the record regarding the alleged request for interconnection agreement upon which the law can be applied.

Citizens' Counsel states in its Comments that, "Ben Lomand holds the opinion that Citizens is statutorily prohibited from competing in Ben Lomand's territory." While VFS is aware of T.C.A. § 65-29-102 which provides that there shall be no duplication of service in the territory of a telephone cooperative where there is reasonably adequate telephone service, there is no evidence in the record as to Ben Lomand's opinion as to whether Citizens is statutorily prohibited from competing in Ben Lomand's territory. That issue is not properly before this agency in this docket. An assertion by Citizens' attorney as to Ben Lomand's opinion is not a factual basis upon which the Hearing Officer can draw a legal conclusion. Nor can VFS or Ben Lomand provide a substantive response to arguments of counsel that have no factual basis in the record.

IV. VFS has met the criteria for granting of a CCN under T.C.A. § 65-4-201, and therefore its CCN should be granted.

In his Comments Counsel for Citizens states that Citizens does not object to the certification of VFS and agrees that it has satisfied the requirements of T.C.A. § 65-4-201(c). Citizens' Comments state that under T.C.A. 65-4-201(a) the Authority has the duty to review the public interest implications of all applications for licensure (Citizens' Comments, p. 2). With respect to telecommunications service

providers, the Tennessee Generally Assembly has spoken about the public interest issue through its declaration of telecommunications policy in T.C.A § 65-4-123 which encourages competition. Therefore, based on that public policy, the public convenience and necessity requires the granting of competing certificates to qualified applicants, such as VFS. There is no evidence in the record that would support the position that it is against the public interest to grant the authority requested by VFS. Whether a competing certificate has been, can be or should be granted in Ben Lomand's territory is not and should not be an issue in this docket

In his Comments, counsel for Citizens cites TRA dockets involving BellSouth affiliates for the proposition that the Authority has asserted its public interest prerogatives in considering competing local exchange carrier ("CLEC") applications under T.C. A. § 65-4-201(a). Those cases can be distinguished from the present case by the fact that the applicants in those cases were wholly owned subsidiaries of BellSouth Telecommunications Company ("BellSouth"). BellSouth is regulated by the TRA and is also subject to federal and state restrictions regarding the CLEC operations of its affiliates (*See* 47 USC § 272 regarding affiliates of Bell operating companies providing competitive services and T.C.A. § 65-5-208(c)). Ben Lomand is not regulated by the TRA, nor is it a Bell operating company subject to 47 U S C § 272. Further, VFS is not a wholly owned subsidiary of Ben Lomand; it is 50% owned by Volunteer Energy Cooperative.

Conclusion

VFS has met the criteria for receiving a CCN from the Authority. This Authority should not further delay or condition VFS' certificate based upon allegations that are unsupported in the record or in the law. Therefore, VFS respectfully requests that the TRA grant its Application as filed without the condition recommended by Citizens.

Respectfully submitted,

Volunteer First Services, Inc.

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Counsel for Volunteer First Services, Inc.

Certificate of Service

I hereby certify that on this 29th day of March, 2004, that a copy of the Reply Comments of Volunteer First Services was sent via First Class Mail, to Guilford Thornton, Jr., Stokes Bartholomew Evans & Petree, P.A., SunTrust Center, Ste 2800, 424 Church St., Nashville, Tennessee 37219.

D. Billye Sanders
D. Billye Sanders, Esq.